

19 November 2020



Mr Samuel Martin  
Australian Energy Market Commission (AEMC)  
GPO Box 2603  
Sydney NSW 2000

Dear Mr Martin

**AEMC CONSULTATION PAPER: REVIEW OF THE RETAILER OF LAST RESORT SCHEME (RPR0015)**

Endeavour Energy appreciates the opportunity to provide this response to the AEMC's consultation paper on the review of the Retailer of Last Resort (RoLR) scheme. We recognise the AEMC's heightened concerns about retail market resilience in the current COVID-19 pandemic conditions and the potential transfer of large numbers of non-paying customers to RoLRs potentially triggering cascading retailer failure across the sector.

The consultation paper proposes to implement some of the recommendations made in the AEMC's 2020 Retail energy competition review final report to improve the adequacy of the RoLR scheme to deal with the potential multiple retailer failure and improve customer outcomes. These include:

- removing the requirement for small customers to be placed on a standard retail contract and instead allow the RoLR to submit market offers to be used for RoLR customers;
- providing greater clarity on the RoLR cost recovery arrangements;
- delaying the designation of RoLRs to provide the Australian Energy Regulator (AER) more time to consider appointing other RoLRs in addition to the default RoLR and assess the most appropriate allocation of customers to designated RoLRs; and
- delaying the requirement for the RoLR to provide credit support to the Australian Energy Market Operator (AEMO) associated with the additional customers to reduce the likelihood of the RoLR being issued default and suspension notices.

We broadly support the proposed amendments and consider they will enhance the ability of RoLRs to withstand many of the challenges associated with promptly stepping in to provide electricity supply to customers of failed retailers. Our feedback relates to the proposed refinements to the RoLR cost recovery arrangements.

**RoLR cost recovery arrangements**

The consultation paper suggests uncertainty in how RoLRs can recover their reasonable costs and the impact of this uncertainty on cash flows, financing and access to credit support are barriers deterring participation in the RoLR designation process by retailers other than the "Big 3" retailers. The AEMC considers greater competition in the RoLR appointment process is desirable as it would spread the risks of being a RoLR across several retailers and reduce the likelihood of a RoLR encountering financial distress or failure following a RoLR event.

To address these uncertainties and incentivise more registered RoLRs, the AEMC proposes to remove the National Energy Retail Law (NERL) requirement for the AER's cost recovery scheme decision for the registered RoLR to itself bear some of the costs, in proportion its customer base. It is proposed that the scheme clarify that these costs should instead be recovered entirely through a distributor payment determination.

This change would effectively transfer RoLRs costs to a distribution network(s) for every RoLR event. Consequently, distributors and their customers would be burdened by the costs of the failed retailer's actions (or inactions) for which they had no role in or ability to influence. This conflicts with the general

principle underpinning many of the AEMC's rule decisions that the participant best placed to manage risk should bear the cost of that risk.

In the instance of a RoLR event, this party is the RoLR who has volunteered to maintain supply continuity following a retailer failure. Providing they can meet the requisite registration and prudential obligations, the RoLR scheme naturally incentivises retailers to volunteer as a RoLR for the opportunity it provides to gain additional customers for little cost or marketing effort. Under the proposed change, distribution customers will bear these risks and receive no benefit in return.

We agree that recovering RoLR event costs should not result in onerous price increases and consider it appropriate that cost recovery extend beyond just the customers of the failed retailer. However, a RoLR's costs would be more efficiently allocated if they were shared across their own customer base. Where this approach delivers only a small change in price, this outcome should be preferred to sharing costs more widely across the distributor(s) customer base. A distributor payment determination should be utilised (in conjunction with a cost contribution from the RoLR) where cost sharing would increase the number of customers seeking financial assistance and entering hardship plans.

Also, the AEMC has previously indicated that retailers should still have the ability to offer to bear some costs, as this may encourage retailers to offer competitive terms to become a RoLR<sup>1</sup>. In our view, removing the guiding principle from the NERL removes a key signal to prospective RoLRs that those who offer to bear some costs will be preferred by the AER during the designation process. This could discourage RoLRs from offering to absorb some of their own costs and embed distribution customers as effectively the underwriters of RoLR risk.

### **Recovering distribution payment determination costs**

It is imperative the RoLR framework contain clear arrangements that allow distributors to recover costs following a distribution payment determination by the AER. We consider there are existing ambiguities and inconsistencies in the current RoLR framework that might prevent distributors from recovering these costs from distribution customers.

For instance, the (NERL) specifies that a RoLR distribution payment determination should be taken as both a regulatory change event and a positive change event for the purposes of the NER<sup>2</sup>. Our concern is that regulatory change events are subject to a materiality cost threshold in the National Electricity Rules (NER) which if not met or exceeded could deny distributors the opportunity to recover distribution payment determination costs.

The only potential positive change event in the NER where this threshold does not apply is the retailer insolvency event. However, the NER explicitly excludes costs recoverable under a RoLR distributor payment determination from contributing to retailer insolvency event costs<sup>3</sup>. Also, a retailer insolvency event would not capture the costs from RoLR events triggered for reasons unrelated to retailer insolvency (e.g. the retailer does not meet the financial obligations required by AEMO or ceases to be a Registered Participant in the wholesale market).

The AER has stated that distributors do not need to meet any materiality threshold to recover the distributor payment determination or costs recoverable under a retailer insolvency event<sup>4</sup> nor apply to recover the distributor payment determination<sup>5</sup>. On one hand, this advice appears to conflict with the NERL and NER clauses outlined above. Equally, this view is supported by clause 167(4)(a) of the NERL which indicates that payments made under a distributor payment determination should be taken to be an approved positive pass through amount.

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<sup>1</sup> AEMC, 2020 Retail energy competition review, June 2020, p.264

<sup>2</sup> NERL, cl. 167(2)

<sup>3</sup> NER, cl. 6.6.1(l)(iii)

<sup>4</sup> [AER, Notice of final instruments - RoLR guidelines, RoLR plan and RoLR statement of approach, November 2011](#), p.16

<sup>5</sup> Ibid p.17

We support this guidance from the AER and consider this fair and pragmatic approach should be retained in any updates to the RoLR scheme. However, we believe this advice should be formalised in RoLR scheme amendments to the NERL or NER along with changes to clarify the regulatory treatment of distribution payment determination costs. This would provide greater certainty to both distributors and the AER that RoLRs costs could be passed through to the broader distributor customer base as intended by the scheme and avoid the potential for different interpretations and confusion around the recovery of these costs.

If you have any queries or wish to discuss our submission further please contact Colin Crisafulli, Manager Network Regulation at Endeavour Energy on (02) 9853 6017 or via email at [colin.crisafulli@endeavourenergy.com.au](mailto:colin.crisafulli@endeavourenergy.com.au).

Yours sincerely

A handwritten signature in black ink, consisting of stylized cursive letters, followed by a period.

**Françoise Merit**  
**Chief Financial Officer**